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SUBJECT: LIST OF LEGAL DETERRENTS TO ECONOMIC DEVELOPMENT IN THE PHILIPPINES (PREPARED IN MEMORANDUM FORM FOR USE OF THE UNITED STATES ECONOMIC SURVEY MISSION)

I. Constitutional Restrictions

A. Article XIII, Sections 1 to 5, of the Philippine Constitution fixes ten definite restrictions on ownership of natural resources and the holding of public and private land:

1. All natural resources belong to the State;

2. The disposition, exploitation, development or utilization of the natural resources is limited to Philippine citizens and corporations in which they own at least 60 percent of the capital; 1/

3. No natural resources other than public agricultural land are alienable, even to nationals and their corporations.

4. No natural resources may be leased for a longer period than 25 years, renewable for another 25 years, except as to water rights for uses other than the development of water power.

5. No private corporation may acquire, lease or hold public agricultural lands in excess of 1,024 hectares; 2/

6. No individual may acquire public agricultural lands; (a) by purchase in excess of 144 hectares; (b) by lease in excess of 1,024 hectares; or (c) by homestead in excess of 24 hectares;

7. Except by inheritance no private agricultural land may be transferred to individuals or corporations not qualified to acquire public lands, i.e. other than Philippine citizens and their corporations; 1/

8. All land in the Philippines, except mineral and timber lands, is agricultural land and consequently no one other than Philippine citizens and their corporations can acquire any land, public or private, not even a residential lot. This restriction is not explicit in the Constitution, but derives from the Supreme Court's decision of Nov. 15, 1947, in the Krivenko Case; 3/ 1/

1/ Alien restrictions not applicable to United States citizens and their corporations during the effectivity of the United States-Philippine Trade Agreement. (Trade Agreement: Art. VII.)
2/ Hectares times 2.47 equals acres.
3/ Official Gazette, vol. 44, p.471.

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9. Congress may determine by law the size of private agricultural holdings; and

10. Congress can expropriate any land holding and subdivide it for sale at cost to individuals, not necessarily to tenants.

B. Article XIII, Section 6 and Article XIV, Section 8 of the Philippine Constitution place severe restrictions on public utilities and render all franchises subject to amendment or repeal by the legislative branch of government:

11. Public utilities may be established and operated by the State;

12. Public utilities may be expropriated by the State upon payment of just compensation;

13. No franchise for a public utility may be granted except to Philippine citizens or corporations in which they own at least 60 per-cent of the capital; 1/

14. No franchise for a public utility shall be exclusive in character;

15. No franchise for a public utility shall be for a longer period than 50 years; and

16. All franchises for public utilities shall be subject to amendment and repeal by the Congress.

II. Statutory Deterrents

A. The more important statutes which implement the constitutional provisions regarding land and other natural resources are: 1/

1. The Public Land Act: Commonwealth Acts 141, 292, 310, 456, 615, and Republic Acts 107, 133, 293.

2. Pasture Land Act: Commonwealth Act 452.

3. Forest Land Laws: Revised Administrative Code (Chapter 47), Commonwealth Act 100, Republic Act 121.

4. The Mining Act: Commonwealth Acts 137, 309, 466, Republic Acts 81, 215, 225.

5. Petroleum Act of 1949: Republic Act 387.

6. Aquatic Resources Laws: Act of the Philippine Legislature 4003, Commonwealth Acts 115, 297, 471, Republic Acts 294, 462.

B. Aside from the statutes implementing the constitutional provisions restricting the holding of land and natural resources, there are a number of deterrents which rest only on statutes, although it may be that some few of these might be argued back to constitutional terms. A list of the principal statutory deterrents follows:

7. The coastwise trade is limited to vessels owned by Philippine citizens and corporations in which they control 75 percent of the capital stock. (Adm. Code, 1940 ed., 1172, as amended by R.A. 76.)

8. No Philippine citizen or company organized in the Philippines without specific consent of the President of the Philippines may register a ship under a foreign flag, construct a ship for foreign registry, sell, mortgage, lease or charter a ship to a foreign citizen or company. Similar restrictions are applicable to shipbuilding, ship repair and the operation of shipyards and dry docks. (C.A. 606 as amended by R.A. 76.)

9. No permits may be issued for commercial operation of aircraft unless owned by a Philippine citizen, partnerships in which every partner is a Philippine citizen or companies in which Philippine citizens hold two-thirds of the capital stock, except aircraft in international service. (C.A. 168 as amended by R.A. 76.)

10. The number of foreign airmen licensed in the Philippines for operation on aircraft of Philippine registry, including those in international service, is to be reduced each year by one-half of the number licensed the preceding year, and no new licenses are to be issued to foreigners for such operations after 1952. (R.A. 158.)

11. No new banks or banking institutions, the latter broadly defined, can be established or licensed to do business in the Philippines unless 60 percent of the capital is held by, and two-thirds of the members of the board of directors are Philippine citizens. (R.A. 337, Sections 11-13.)

12. All deposits of foreign owned banks received after July 24, 1948 must be invested within the Philippines. (R.A. 337, Section 11.)

13. No contract provision for payment in gold or currency other than Philippine legal tender, or guaranteeing convertibility at a rate of exchange is enforceable. (R.A. 529, approved June 16, 1950.) 4/

4/ R.A. 386, the new Civil Code of the Philippines, effective one year from date of publication in the Official Gazette (published in the June 1949 monthly issue released for circulation Aug. 30, 1949) carries two provisions contradictory to R.A. 529: Art. 1249, (old Code 1170) "The payment of debts in money shall be made in the currency stipulated...."; Art. 1250, (not in old Code) "In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of establishment of the obligation shall be the basis of payment. ..." Two controversies have arisen: (a) whether the new Code became effective July 1, 1950 or Aug. 30, 1950; (b) whether Arts. 1249 and 1250 supersede R.A. 529.

14. Banking, credit, the currency, and reserves are under control, without due legal safeguards or limits, of a Central Bank governed by a Monetary Board of seven members, three of whom (Secretary of Finance, President of the Philippine National Bank, and Chairman of the Board of Governors of the Rehabilitation Finance Corporation) represent the bank's principal debtors. (R.A. 265.)

15. No foreign exchange can be purchased or funds withdrawn from the Philippines except under licenses issued by the Central Bank. (R.A. 265, Section 74.)

16. All imports are under Government control, and the Government has seized upon import controls as a means to Filipinize the import trade through provisions which require that quotas be established for every article imported into the Philippines, that not more than 30 percent of any quota be allocated to a single importer, and that large fractions (f.y. 1950-51, 30%; 1951-52, 40%; 1952-53, 50%) of each quota be reserved for new importers who are Philippine citizens or corporations in which Philippine citizens own 60 percent of the stock. 5/ (R.A. 426, especially Sections 11 to 14.)

17. The price control law gives the President the right to authorize a government agency (PRATRA) to commandeer and distribute stocks in short supply and to designate any government agency to import goods to replenish stocks in short supply without increasing the corresponding import allocations to private traders. (R.A. 509, Sections 4 and 5.)

18. In government procurement, domestically produced goods have a 15 percent ad valorem preferential over imported goods and "domestic entities" (defined as Philippine citizens and corporations in which Philippine citizens own 75 percent of the stock) have a 15 percent ad valorem preferential as vendors, bidders and contractors. (C.A. 138 as amended by R.A. 76.)

19. No more than 50 immigrants of any one nationality may enter the Philippines in any year; treaty merchants may enter as non-immigrants only if so specified in a treaty, and the Philippines have no treaties so specifying; aliens coming to prearranged employment enter as non-immigrants only when it is established beyond doubt that no one can be found in the Philippines willing and competent to perform the work for which it is proposed to hire the alien. (C.A. 613 as amended especially by R.A. 503.) 6/

5/ A proviso permits United States citizens and their corporations to qualify as new importers.

6/ From 1946 to 1951, inclusive, 1,200 United States citizens may enter the Philippines for five years' temporary residence, and until July 31, 1951, United States citizens who were pre-war residents and their dependents may re-enter for permanent residence. (Trade Agreement, Art. VI.)

20. The reciprocal treatment clauses governing the practice of professions, including public accountants, civil and chemical engineers and architects are so written and interpreted as to make it most difficult for foreigners to be licensed to practice in the Philippines. (Adm. Code, 1940 ed., Secs. 772, 796, 730, Phil. Leg. 3105, C.A. 342, R.A. 76, 318, 382, 417, 544, 545.) 7/

III. International Treaty Deterrents

The Philippines has no treaty of commerce and navigation with any country, and with the exception of certain terms in the United States-Philippine Trade Agreement, there exists no international relationship guaranteeing national treatment of foreigners, their property or goods. The United States-Philippine Treaty of General Relations (July 4, 1946) has the effect of granting national treatment in respect to property rights of citizens and corporations of the United States existing at time of independence.

The United States has sought to negotiate a treaty of friendship, commerce and navigation and treaties to avoid double taxation, but the Philippine negotiators have opposed every substantial proposal for mutual national treatment.

In the Philippine-China Treaty of Amity (April 18, 1947), the Philippines accords most-favored-nation treatment to persons, property and trade, except for "... advantages which are now or which may hereafter be accorded by the Republic of the Philippines to the United States of America or its nationals."

The United Kingdom reportedly was offered the same terms as those granted in the treaty with China, and declined to continue negotiations on so limited a basis.

The Philippine-France Treaty of Friendship (June 26, 1947) is based solely on reciprocity subject to restrictions placed on nationals of third countries.

The Philippine-Italy Treaty of Friendship and General Relations (July 9, 1947) grants property and personal rights "... to the extent permitted by the laws and regulations ..."

The Philippine-Spain Treaty of Friendship (September 27, 1947) and the Philippine-Spain Treaty of Civil Rights and Consular Prerogatives (May 20, 1948) granted personal and property rights on a reciprocal basis subject to local laws.

7/ Professionals, including lawyers, who are United States citizens and were practicing in the Philippines prior to independence are allowed generally to continue practicing under the concept that the right to such practice is a property right protected by the United States-Philippine Treaty of General Relations. (Treaty of General Relations: Art. VI.)

The Philippine Congress, unhindered by treaty commitments, proceeds annually to enact additional measures restricting the economic activities of foreigners.

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